

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

POSTAL RATE AND FEE CHANGES
PURSUANT TO PUBLIC LAW 108-18

Docket No. R2005-1

OPPOSITION OF THE UNITED STATES POSTAL SERVICE
TO DAVID B. POPKIN MOTION TO COMPEL RESPONSES
TO INTERROGATORIES DBP/USPS-88 AND 90
(June 30, 2005)

In accordance with Rule 26(d) of the Commission's Rules of Practice and Procedure, the United States Postal Service hereby files its opposition to the David B. Popkin Motion to Compel Responses to Interrogatories DBP/USPS-88 and 90, filed by David B. Popkin on June 20, 2005.¹ For the reasons presented herein, the Postal Service respectfully opposes Mr. Popkin's motion to compel. Each interrogatory is considered in turn.

DBP/USPS-88

In this interrogatory, Mr. Popkin seeks detailed information concerning those offices that do not receive shipments of Express Mail six days a week. The Postal Service objected to providing such a list on burden grounds, supplemented by the fact that the requested information is of little if any relevance to this case. At the same time,

¹ Mr. Popkin's Motion to Compel of June 20, 2005 also concerned DBP/USPS-103(b)-(d) and 147. The Postal Service's answer to the motion to compel with regard to those interrogatories and requests for production was filed on June 27, 2005. Also on June 27, the Postal Service moved for permission to file its response to the motion to compel with regard to these interrogatories today. See Motion of the United States Postal Service for Permission to File Three Days Late Its Response to the David B. Popkin Motion to Compel Responses to DBP/USPS-88, 90, 129(a)-(d), and 147. The Postal Service's reply to the motion to compel with respect to DBP/USPS-147 is forthcoming.

however, the Postal Service provided an answer to this interrogatory stating that any list of those offices would be substantially similar in both size and scope to the one provided in response to DBP/USPS-65(d) in Docket No. R2001-1. The Postal Service submits that its response to DBP/USPS-88 is more than sufficient in the context of this proceeding, and thus that Mr. Popkin's motion to compel should be denied.

As an initial matter, Mr. Popkin insists on recycling his overly broad interpretation of the proper standard for the relevancy of the operational details of Express Mail, which he made in an earlier motion to compel and which was rejected by the Presiding Officer.² Specifically, Mr. Popkin continues to cite Presiding Officer's Ruling No. R97-1/53 for the proposition that an interrogatory that seeks operational details of Express Mail is relevant since "[t]he details of Express Mail service are relevant to its value of service." As the Postal Service has previously noted in this case, however, Presiding Officer's Ruling No. R97-1/53, as well as subsequent Presiding Officer's Ruling, does not stand for such a broad standard, and that the practical effect of such a standard would be that no Express Mail interrogatory would be objectionable on relevance grounds.³ In Presiding Officer's Ruling No. R2005-1/19, at 3, the Presiding Officer

² In addition, Mr. Popkin seems to indicate that the fact that the Postal Service provided a response to an interrogatory in a previous omnibus rate case means that it should not be allowed to object to an identical question in a subsequent case. The Postal Service must not, however, be penalized in later cases for choosing to answer an interrogatory that it might consider to be objectionable on relevancy grounds. The Postal Service answers many such questions throughout the course of a rate case, for various reasons. If, however, the failure to object to a particular question is used in a later case as a basis for upholding a motion to compel with respect to an identical or substantively similar question, the Postal Service would likely have no choice but to dramatically increase the number of questions to which it objects.

³ See Opposition of the United States Postal Service to David B. Popkin Motion to Compel Response to Interrogatory DBP/USPS-49(h) (May 24, 2005), at page 2 n.5.

agreed, noting that “a rule of reason limits the extent to which operational details are appropriate for exploration in discovery.”

Under this “rule of reason,” the information already provided by the Postal Service with regard to this issue is clearly sufficient for purposes of this proceeding. The Postal Service has already indicated, in its response to DBP/USPS-88, that fully responding to this interrogatory would produce a list that is substantially similar in size and scope to the one produced in the last case, and has also, in its response to DBP/USPS-127, indicated the extent to which the specific data provided in the last case is still accurate. In light of these responses, and considering the attenuated relevance of this issue to begin with, the Postal Service should not be required to bear the burden of dedicating its field resources to producing an updated list when such an effort would at most only discover minor differences between the list produced in the last case.⁴ As such, even if the Commission was interested as a general matter in examining the issue of Express Mail delivery to these Post Offices in this proceeding, these differences would not have any bearing on such a general consideration of that issue.

DBP/USPS-90

Concerning his request for Registered Mail training materials in interrogatory DBP/USPS-90, Mr. Popkin argues that “he is trying to evaluate as many aspects of the

⁴ To the extent that Mr. Popkin may wish to argue that the Postal Service is not providing “proper information” to the public concerning Express Mail service, and that as a result the Commission should take some sort of action with regard to its recommended Express Mail rates, he does not explain why the information that has already been provided to him in response to DBP/USPS-88 and 127 is not sufficient for him to do so. The minor differences between an updated list and the list provided in Docket No. R2001-1 would have no material bearing on any such argument that he wishes to make. Thus, the Postal Service should not be required to bear the burden of updating the list.

service as I can,” in response to the Postal Service’s proposal to raise Registered Mail fees by 70 percent. He expresses a willingness to have the parts of the training materials that deal with processing of remittances, as opposed to handling of Registered Mail, redacted, and to accept the remaining materials under protective conditions. Finally, he requests “the ability to evaluate the method of processing Registered Mail.”

The Postal Service, and specifically the Inspection Service, strongly opposes release of these training materials, even under protective conditions, because they focus on the Registered Mail processing steps, especially those related to processing of Postal Service remittances. The training materials cover the specific procedures used by the Postal Service to maintain the security of Registered Mail. Any risk that these procedures would be compromised, even by letting the materials be reviewed by rate case intervenors, is too large a threat to the security of Registered Mail. Inspection Service policy is to restrict the distribution of these training materials to Postal Service employees and contractors who are involved in the processing of Registered Mail.

Since Postal Service remittances are sent as Registered Mail, redacting the parts of the training that pertain to remittances is not practical, and would leave only limited materials of virtually no rate case value for distribution. Moreover, redacting the training video would be burdensome.

Moreover, the Postal Service does not believe that the training materials provide a material source of information that would help Mr. Popkin or the Commission respond to the Postal Service proposal for Registered Mail fees. Instead, the Postal Service believes that it is providing the necessary information through its testimony and

responses to discovery. E.g., interrogatories DBP/USPS-53-54, 75; OCA/USPS-T9-7, OCA/USPS-T10-1-7, OCA/USPS-T27-1, OCA/USPS-T28-11-12, and OCA/USPS-183-185, and Presiding Officer's Information Request No. 9, Question 6. A wide variety of information about Registered Mail has already been or will soon be provided, including material that shows the cost impact of the Registered Mail operations. This information should be the focus of parties who are concerned about the Postal Service proposal for Registered Mail. If Mr. Popkin had specific questions about Registered Mail processing that he needed to know in order to respond to the Postal Service fee proposal in this docket, he could have asked them during discovery. But the Postal Service is unwilling to let Mr. Popkin or others fish for such details in the requested training materials, especially when the Postal Service believes that the training materials do not contain any information needed to address the Postal Service's proposal for Registered Mail.

Respectfully submitted,

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